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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JOHN PATRICK CONLON,

Plaintiff and Appellant,

v.

FLORENCE TETERS et al.,

Defendants and Respondents.

D052357

(Super. Ct. No. 37-2007-00053571-  
CU-NP-NC)

APPEAL from a judgment of the Superior Court of San Diego County, Robert P. Dahlquist, Judge. Affirmed.

John Patrick Conlon and Gregory Scott Beauchamp, in propria persona, sued Florence Teters, individually and as the trustee of the Florence Teters Trust (Teters), alleging claims for infliction of emotional distress, fraud, invasion of privacy, defamation, and interference with contractual relations and prospective economic advantage, based upon Teters's complaints to the City of Encinitas (the City) about allegedly illegal construction and other activities at a property in the City located at 452

Fourth Street (the property), wherein Beauchamp resided. Conlon is a licensed real estate broker who had a listing agreement with Beauchamp to sell the property and was also accused by Teters of residing illegally in a basement of the residence on the property. Conlon and Beauchamp alleged the statements made by Teters to the City concerning the property, and them as individuals, were false and defamatory, her actions invaded their right to privacy, and she interfered with Conlon's listing agreement with Beauchamp and prevented a sale of the property.

In response to Conlon and Beauchamp's complaint, Teters brought a demurrer and a special motion to strike the action as a "SLAPP" (strategic lawsuits against public participation) suit under the anti-SLAPP statute, Code of Civil Procedure<sup>1</sup> section 425.16. The court granted the motion and entered judgment in favor of Teters. The court further awarded attorney fees to Teters.

Conlon appeals,<sup>2</sup> asserting the court erred in granting the motion to strike because (1) the action does not "arise from" Teters's constitutionally protected speech or petition rights; (2) it failed to conduct the required two-pronged anti-SLAPP analysis; and (3) the anti-SLAPP statute did not apply to Teters's conduct as it was illegal as a matter of law. Conlon further asserts that if the judgment is reversed, this court must also reverse the award of attorney fees. We affirm the judgment.

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure unless otherwise specified.

<sup>2</sup> Beauchamp has not appealed the court's order granting the motion to strike and resulting judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### A. *The Parties*

According to the complaint, in 1998 plaintiff Beauchamp entered into a lease option contract for the property. In July 1998 the lease option on the property was transferred by Beauchamp to an "associate." Thereafter, in February 2000, the property was sold to Melvin Beauchamp, Beauchamp's father. Beauchamp remained a tenant at the property.

Conlon is not alleged to be a tenant at the property nor alleged to have any ownership interest in the property. Rather, the complaint alleges that he is a licensed real estate broker and a licensed general contractor, residing on Jupiter Street within the City and having his place of business on D Street within the City. Although much of the complaint discusses Teters's complaints to the City about the actions of Beauchamp, as will be described in more detail, *post*, the complaint also alleges that she complained about a "[f]at [m]an" (Conlon) allegedly living illegally in the basement of the property. Conlon also asserts, as described in more detail, *post*, that he had a listing agreement with the owner, Melvin Beauchamp, which Teters and her attorney interfered with by complaining to the City that the property could not be sold in its "illegal" condition.

*B. The Allegations of the Complaint*

The complaint alleged that in 1998 Beauchamp applied for a parcel map waiver on behalf of the owner, with whom he at that time had a lease with an option to purchase. Beauchamp also applied to divide the property into two legal and separate parcels. In connection with his attempts to split the property into two legal distinct parcels, Beauchamp began to repair and renovate the structures on the property.

The complaint alleges that at the same time Beauchamp started these repairs, Teters lodged a series of complaints with the City. It is further alleged that these complaints led to the City issuing various notices to correct and stop orders. Specifically, the complaint alleges that "[o]n or about March 12, 1998, [Teters] filed a complaint with the City of Encinitas for the noise generated on the Beauchamp property during the repair and maintenance period." "As a direct result of the complaint of [Teters], the [City] issued a 'Stop Work' notice but never initiated any form of investigation . . . ." <sup>3</sup>

The complaint alleges that after Beauchamp obtained a parcel map waiver from the City, Teters "developed a strategy to harass [Beauchamp] through the indiscriminate and wholesale secret complaint process to the [City]." The complaint further alleges that she engaged Attorney Schwaebe (who was not named as a defendant in the complaint) in

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<sup>3</sup> Because the contacts alleged in the complaint began in 1998 and concluded in 2003, it appears that Conlon's complaint, filed in June 2007, may be barred by the statute of limitations. In fact, Teters's demurrer filed concurrently with the motion to strike raised this defense. However, because the court granted Teters's motion to strike, it did not rule on her demurrer, and this issue is not before us on this appeal.

a "conspiracy to intimidate, terrorize and harass [Beauchamp]." The complaint alleged Schwaebe "on behalf of [Teters] initiated correspondence with Mr. William Dever, owner of the property and business associate of [Beauchamp], in order to intimidate Dever to disassociate with [Beauchamp] . . . ." Specifically, the correspondence asserted Dever might be held liable for bankruptcy fraud for holding the property for Beauchamp, who was then in bankruptcy proceedings.

The complaint alleges Dever then transferred the property to Beauchamp's father, Melvin Beauchamp. In response, the complaint alleges, "Teters jumped into action and filed another 'secret and confidential' complaint with the [City]. On March 28, 2000, [Teters] writes: 'It now appears as though little, if any, action was taken in response to my letters which began August 24, 1998, and continued through December, 1998.' " (Boldface and italics omitted.) Teters allegedly stated in the correspondence with the City, "I will enumerate the violations for you." (Boldface and italics omitted.) The complaint alleged Teters informed the City of "a plethora of actions and conduct by [Beauchamp] as a result of a surveillance program initiated by her." In support of her complaint to the City, Teters allegedly "initiated a picture taking practice and documented the activities of the Beauchamp's and the activities at their home."

The complaint further alleges that, "[o]n or about April 17, 2000, [Teters] relentlessly pestered the [City] to follow up on her various complaints and urged and plead[ed] with City officials to do 'something' as a result of the effort she expended to provide what she believed were viable complaints about the Beauchamps and the [property], [Teters] urging resulted in the [City] filing a Notice of Violation on April 26,

2000 for what was referred to as 'recent remodeling' activities at the [property]. Each of the complaints, phone calls and conversations initiated by [Teters] to the [City] was confidential and nothing was disclosed to the Beauchamp's in order that they have an opportunity to be heard or respond to the allegation of [Teters]." (Boldface and italics omitted.) The complaint next alleges that "on May 19, 2000, [Teters] writes another letter to the [City] urging further action on her secret complaints."

The complaint states that "[a]s a result of [Teters's] pleading and urging, the [City] filed another 'Notice of Violation' on May 22, 2000 burdening the real property."

The complaint further alleges that Attorney Schwaebe filed a complaint in Beauchamp's bankruptcy proceedings, was provided discovery in that proceeding, and provided to the City receipts showing construction on the property that he received via that discovery. The complaint alleges Schwaebe had further communications with the City about construction on the property, supported by Beauchamp's discovery responses, which the complaint describes as an "illegal" use of Beauchamp's private information.

The complaint alleges that "[a]s a result of the drum beating by [Schwaebe] and [Teters], the [City] filed a Notice of Violation against the [property] on August 14, 2000, mere days after the deluge of illegal information dumping on the [City] by [Schwaebe.]" The complaint alleges Teters then "complained to the [City] on April 2, 2001, that 'A new vent pipe has recently appeared on the roof of 452 4th Street. I believe this vet [*sic*] is a heating system vent. If it is a heating system, it was installed without a permit'. . . . Based upon the surveillance program of [Teters] and the secret complaint, the [City] issued 'Stop Work' orders on May 1, 2001."

The complaint then focuses on Teters's and Schwaebe's correspondence with the City concerning her allegation a "fat man" (Conlon) was living illegally in the basement of the property. Specifically, the complaint alleges that "[o]n February 12, 2003, [Teters] once again wrote a letter to the [City] to notify the [City] of several 'code violations' 'committed in the last few months.' In this correspondence [Teters] believes that her prior complaints failed to have the horsepower to gain the attention of the [City]. In this correspondence, [Teters] ramps up the complaint process and now alleges that 'There is a man who has been living in the space under the house since November or December 2002.' " The complaint alleges that evidence of this was supported by photographs taken by Teters as part of her "surveillance program." The complaint further alleges that as a result of that correspondence, the City arranged a site visit, and determined the complaints were false and "frivolous." The complaint identifies the man alleged to be living under the house as Conlon and indicates that the complaints by Teters caused him "great emotional distress and humiliation." The complaint also describes contact with the City by Schwaebe regarding Conlon: "On April 21, 2003, [Schwaebe], referring to [Teters's] prior complaint about somebody living in the basement, outlines a series of representations from [Teters] indicating a surveillance program of Conlon, the man using the basement area." The complaint alleges that in their correspondence with the City Teters and Schwaebe described him as the "Fat Man," and that such description was "mean spirited and humiliating" and "without privilege." The complaint refers to another contact with the City by Schwaebe as follows: "In spite of being advised otherwise, [Schwaebe] and [Teters] attacked Beauchamp and Conlon in a correspondence to the

[City] dated May 30, 2003. [Schwaebe] and [Teters] were advised on several occasions that there was no one living in the basement at the Beauchamp address. [Schwaebe] and [Teters] would not accept the findings of the Code Enforcement Officer and the City Attorney. [Schwaebe] writes: 'Regarding the illegal tenancy in the basement of the subject property, [Teters's] letter of April 26, 2003, with a long litany of events which occurred involving the tenant therein, from April 10 through April 25. The resident under the property is not coming and going, turning on and off lights, opening and closing doors, and putting out his trash, as well as parking on the street for nothing. This is not a ghost tenant.' " (Boldface & italics omitted.)

The complaint also alleges that "Schwaebe wrote correspondence to the [City] complaining about the fact that [Conlon] had entered into a listing agreement with Mel Beauchamp to sell the [property]." Specifically, the complaint alleges "Schwaebe presented a copy of the MLS [multiple listing service] flyer as a basis of some illegal assertion that the property could not be sold. [Schwaebe] further represented to the City that the property could not be sold. [Schwaebe] effectively interfered with the listing agreement Conlon had with [Mel Beauchamp] to sell and transfer his real property." The complaint alleges that "[a]s a result of the misrepresentations of [Schwaebe], on behalf of [Teters], the property was disparaged by the [City] and all prospective buyers were subject to the misrepresentations of [Schwaebe] and [Teters] that effectively prevented the sale of the property. If [Schwaebe] and [Teters] [had] not misrepresented the truth regarding the property, the property would have been sold at fair market value."



The first six causes of action, brought by Conlon and Beauchamp together, allege they were damaged by Teters's actions in making false statements to the City, conducting a surveillance operation against them, and disclosing to the City "private and business facts and information" regarding them. The seventh cause of action for defamation, eighth cause of action for interference with contractual relations, and tenth cause of action for interference with prospective economic advantage were brought by Conlon alone. The defamation claim alleges that Teters falsely accused him of conducting illegal activities while using the basement at the property, illegally offering the property for sale, perpetrating a fraud on the City, conducting an illegal business, living illegally in the basement of the property and " 'staging' another use of the basement when inspected by the City . . . ." The eighth cause of action for interference with contractual relations alleges that Teters made false statements to the City about his listing agreement with Melvin Beauchamp, and as a result, "several prospective purchasers of the [property] refused to contract for the sale of the [property]." The tenth cause of action alleges Conlon "had a legitimate and identifiable prospective business advantage of being the listing broker of [the property]," and Teters used a "barrage of confidential correspondence to the [City]" to interfere with his "prospective economic advantage in the contracting and development marketplace."

The complaint seeks damages of \$3 to \$5 million.

#### *B. Motion To Strike*

In July 2007, Teters filed her anti-SLAPP motion to strike, as well as a demurrer to the complaint. The motion to strike alleged that because the complaint was based upon

Teters's complaints to the City of alleged illegal activities occurring at the property, it was subject to the anti-SLAPP statute. The motion also asserted that because Teters had shown the action was subject to section 425.16, the burden shifted to Conlon and Beauchamp to show a prima facie case for their claims.

In response, Beauchamp and Conlon argued (1) the motion was moot because it was not set for hearing within 30 days of it having been served; (2) Teters's statements did not concern a matter of public interest and fell outside of section 425.16; and (3) her communications were unprotected because they were false, deceitful, fabricated, illegal, and incidental to any petitioning activity. In support of their opposition, Conlon and Beauchamp lodged 15 letters and complaints made by Teters and Schwaebe to the City, some accompanied by photographs of alleged unpermitted and illegal construction, as well as documenting Conlon's allegedly illegal residence in the basement of the property.<sup>4</sup>

The court asked the parties for supplemental briefing on the issue of whether Teters's communications were privileged under Civil Code section 47, subdivision (b). The parties responded with supplemental points and authorities addressing the issue.

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<sup>4</sup> Teters filed a motion to augment the record on this appeal to include (1) Teters's demurrer; (2) Beauchamp and Conlon's notice of lodgment in opposition to the motion to strike; and (3) Teters's memorandum of costs. We ordered the motion heard in conjunction with this appeal. Conlon has filed no opposition to the motion. We grant Teters's motion to augment as the items Teters seeks to add to the record are properly a part of the record on appeal.

### *C. Court's Order*

The court granted Teters's motion to strike and took the demurrer off calendar as moot. In granting the motion to strike the court first found "the entire complaint is based upon a series of confidential complaints and other communications made by [Teters] to the [City]. The complaints and communications fall within the purview of [section] 425.16 protection." The court also found that Beauchamp and Conlon could not show a probability of success on the merits because the communications were absolutely privileged under section Civil Code section 47, subdivision (b). The court also found the motion was not untimely as the date set for the hearing was "due to the Court docket and not the conduct of [Teters]."

The court thereafter awarded Teters attorney fees in the amount of \$6,916.

This timely appeal followed.

## DISCUSSION

### *I. APPLICABLE LEGAL PRINCIPLES*

The Legislature enacted section 425.16 to deter lawsuits "brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances." (§ 425.16, subd. (a).) "Because these meritless lawsuits seek to deplete 'the defendant's energy' and drain 'his or her resources' [citation], the Legislature sought ' "to prevent SLAPPs by ending them early and without great cost to the SLAPP target." ' " (*Flatley v. Mauro* (2006) 39 Cal.4th 299, 312.) To achieve the goal of encouraging participation in matters of public significance, the statute must be

construed broadly. (§ 425.16, subd. (a); *Kibler v. Northern Inyo County Local Hosp. Dist.* (2006) 39 Cal.4th 192, 197.)

A court engages in a two-step process to determine whether an action is subject to a special motion to strike. (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88 (*Navellier*); *Taus v. Loftus* (2007) 40 Cal.4th 683, 712.) "First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. [Citation.] 'A defendant meets this burden by demonstrating that the act underlying the plaintiff's cause fits one of the categories spelled out in section 425.16, subdivision (e)[.]' " (*Navellier, supra*, at p. 88.) If the court finds that the first prong is satisfied, "it must then determine whether the plaintiff has demonstrated a probability of prevailing on the claim." (*Ibid.*)

Subdivision (e) of section 425.16 sets out four categories of activities that are "in furtherance of" a defendant's free speech or petition rights under the United States or California Constitution in connection with a public issue. These acts are (1) written or oral statements made before a legislative, executive, or judicial proceeding; (2) written or oral statements made in connection with an issue under consideration or review by a legislative, executive, or judicial body; (3) written or oral statements made in a place open to the public or in a public forum in connection with an issue of public interest; or (4) any other conduct in furtherance of the exercise of the constitutional right of petition or free speech in connection with a public issue or an issue of public interest. (§ 425.16, subd. (e).)

We independently review the order granting Teters's special motion to strike. (*Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 269, fn. 3; *Sycamore Ridge Apartments LLC v. Naumann* (2007) 157 Cal.App.4th 1385, 1396.) We consider " 'the pleadings, and supporting and opposing affidavits . . . upon which the liability or defense is based.' [Citation.] However, we neither 'weigh credibility [nor] compare the weight of the evidence. Rather, [we] accept as true the evidence favorable to the plaintiff [citation] and evaluate the defendant's evidence only to determine if it has defeated that submitted by the plaintiff as a matter of law.' " (*Soukup, supra*, at p. 269, fn. 3.)

Moreover, when "a cause of action alleges both protected and unprotected activity, the cause of action will be subject to section 425.16 unless the protected conduct is 'merely incidental.' " (*Mann v. Quality Old Time Service, Inc.* (2004) 120 Cal.App.4th 90, 103 (*Mann*).)

## II. ANALYSIS

### A. Teters's Conduct "Arises From" Protected Activity

"[T]he statutory phrase 'cause of action . . . arising from' means simply that the defendant's act underlying the plaintiff's cause of action must *itself* have been an act in furtherance of the right of petition or free speech." (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78.) "[T]he critical point is whether the plaintiff's cause of action itself was *based on* an act in furtherance of the defendant's right of petition or free speech." (*Ibid.*) The moving defendant has no obligation to demonstrate that the plaintiff's subjective intent was to chill the exercise of constitutional speech or petition rights, or that the action had the effect of chilling such rights. (*Navellier, supra*, 29 Cal.4th at pp. 88-89.)

The "principal thrust or gravamen" of the claim determines whether section 425.16 applies. (*Martinez v. Metabolife Internat., Inc.* (2003) 113 Cal.App.4th 181, 188 (*Martinez*), italics omitted.)

We note preliminarily that we need not consider the communications Teters had with the City that related solely to the alleged activities of Beauchamp as he has not appealed the court's grant of Teters's motion to strike. Therefore, we shall focus on the complaints Teters made that impacted Conlon.

The "principal thrust or gravamen" of Conlon's complaint, as detailed, *ante*, was Teters and her Attorney Schwaebe's complaints to the City about his activities related to the property, specifically (1) his alleged illegal residence at the property, and (2) his listing agreement with the owner. Indeed, in Conlon's opening brief he admits that "[t]he gravamen of Plaintiff's Complaint is the outrageous conduct of [Teters] and [Schwaebe] to draft ever increasingly onerous communications to the [City] to seek unjustifiable and swift government action . . . ."

The allegations of the complaint fall squarely within the anti-SLAPP statute. Complaints made to a governmental body, such as those made by Teters, fall directly within the scope of section 425.16 because, "plainly read, section 425.16 encompasses any cause of action against a person arising from any statement or writing made in, or in connection with an issue under consideration or review by, an official proceeding or body." (*Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1113.)

Conlon asserts that Teters's actions were not with regard to a public issue because once Beauchamp's parcel map waiver application was granted, "any public interest in the

approved project would be ancillary to the actual application and approval process."

However, section 425.16 protects direct petitioning of government agencies and petition-related statements and writings, whether or not the statements are made in connection with a public issue. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1130-1131.) "Under the plain terms of the statute it is the context or setting itself that makes the issue a public issue: all that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding." (*Braun v. Chronicle Publishing Co.* (1997) 52 Cal.App.4th 1036, 1047.)

Conlon asserts that because the statements made by Teters were false and fraudulent, they "are not protected speech or petitioning activities." However, the cases cited by Conlon in support of this contention, *Martinez, supra*, 113 Cal.App.4th 181 and *Kajima Engineering & Construction, Inc.* (2003) 113 Cal.App.4th 181 (*Kajima*), do not support his position, and in fact, demonstrate why it lacks merit.

In *Martinez*, the Court of Appeal held that because "commercial speech" is entitled to less protection than ordinary free speech and petitioning activities, the truth or falsity of such statements is relevant in determining whether they are within the ambit of section 425.16. (*Martinez, supra*, 113 Cal.App.4th at pp. 191-193.) Here, however, there is no allegation that the statements were "commercial speech," i.e., advertising and the like, that is afforded less protection than other constitutionally safeguarded forms of expression. (See *Kaskey v. Nike, Inc.* (2002) 27 Cal.4th 939, 952-954.) Outside the realm of commercial speech, the allegation that a defendant's statements are false or defamatory does not take the action outside the anti-SLAPP statute. (*Fox Searchlight*

*Pictures, Inc. v. Paladino* (2001) 89 Cal.App.4th 294, 305.) The question of whether the statements were false, defamatory or fraudulent goes to the second prong of our analysis, "whether [Conlon] has established a probability of success on the merits." (*Ibid.*)

In *Kajima*, the Court of Appeal held a cross-defendant's actions did not fall under section 425.16 because they arose from its "bidding and contracting practices, not from acts in furtherance of its right of petition or free speech." (*Kajima, supra*, 95 Cal.App.4th at p. 929.) It thus has no application to this case.

Conlon also asserts that the court ignored his allegations of communications by Teters that were not directed at the City, citing her communications with Schwaebe, and his with her. However, it is clear that these communications were merely a part of Teters and Schwaebe's communications with the City. Further, to the extent they were not in themselves protected activity, the complaint was still subject section 425.16: "[W]here a cause of action alleges both protected and unprotected activity, the cause of action will be subject to section 425.16 unless the protected conduct is 'merely incidental' to the unprotected conduct . . . ." (*Mann v. Quality Old Time Service, Inc., supra*, 120 Cal.App.4th at p. 103; *Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.* (2005) 129 Cal.App.4th 1228, 1245; *Peregrine Funding, Inc. v. Sheppard Mullin Richter & Hampton LLP* (2005) 133 Cal.App.4th 658, 672 [referring to and applying the "apparently unanimous conclusion of published appellate cases" that the anti-SLAPP statute applies to mixed causes of action unless the protected conduct is incidental to the unprotected conduct].) Teters and Schwaebe's complaints to the City were not "incidental to" any possible unprotected activity. As Conlon himself admits, the



gravamen of the complaint was their complaints to the City about him and Beauchamp's activities.

*B. Teters's Actions Were Privileged*

Having determined that the action "arises from" Teters's protected activity, we must next analyze whether the court properly determined Conlon could not show a probability of success on the merits. We conclude the court properly concluded that Conlon could not as Teters's communications were absolutely privileged.

In demonstrating the probability of prevailing on the merits, "the plaintiff must demonstrate the complaint is both legally sufficient and is supported by a prima facie showing of facts sufficient to sustain a favorable judgment if the evidence submitted by the plaintiff is given credit." (*Ruiz v. Harbor View Community Assn.* (2005) 134 Cal.App.4th 1456, 1466, citing *Navellier, supra*, 29 Cal.4th at pp. 88-89). The plaintiff cannot demonstrate a probability of prevailing on the merits if the cause of action arises from privileged communications. Civil Code section 47, subdivision (b), provides an absolute privilege to communications made "[i]n any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to [statutes governing writs of mandate]," with certain statutory exceptions not applicable in this case. (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 360 (*Hagberg*).) "The policy underlying the privilege is to assure utmost freedom of communication between citizens and public authorities whose responsibility it is to investigate and remedy wrongdoing." (*Id.* at p. 364, citing *Williams v. Taylor* (1982) 129 Cal.App.3d

745, 753-754.) It covers communications "intended to instigate official governmental investigation into wrongdoing." (*Hagberg, supra*, 32 Cal.4th at p. 370.)

The term "official proceeding authorized by law" applies to proceedings of administrative boards and quasi-judicial and quasi-legislative bodies, such as the City. (See *Whelan v. Wolford* (1958) 164 Cal.App.2d 689, 693 [property owners' written protest before city planning commission regarding plaintiff's application for use variance]; *Pettitt v. Levy* (1972) 28 Cal.App.3d 484, 488 [submission to city of forged building permit intended to deny plaintiff's application for nonconforming use].)

Thus, the allegations of Conlon's complaint are covered by the privilege provided by Civil Code section 47, subdivision (b). The complaint centers upon Conlon and Beauchamp's construction and related activities at the property that Teters reported to the City as improper and illegal. The complaints were obviously designed to try to induce the City to investigate and take action. (See *Brody v. Montalbano* (1978) 87 Cal.App.3d 725, 732-733 [complaint to city board of education about a vice-principal's conduct]; *Cayley v. Nunn* (1987) 190 Cal.App.3d 300, 302-304 [allegedly slanderous statements made by individuals circulating a petition to be given to city council who sought to deny plaintiff's application for height variance].)

Moreover, this privilege is absolute. It applies regardless of whether the communication was made with malice or intent to harm. (*A.F. Brown Electrical Contractor, Inc. v. Rhino Electrical Supply, Inc.* (2006) 137 Cal.App.4th 1118, 1126.) "[T]he privilege does not depend on the publisher's 'motives, morals, ethics or intent.' " (*Kashian v. Harriman* (2002) 98 Cal.App.4th 892, 913.) Thus, Conlon's assertion that

Teters was not motivated by "any particular personal or public interest," and that her goal was to harm Conlon, does not abrogate the privilege.

Conlon also asserts the privilege does not apply because "[n]ot all communications went directly to the government." However, this fact is of no moment. (See *Cayley v. Nunn, supra*, 190 Cal.App.3d at pp. 302-304 [allegedly slanderous statements made to third parties to induce them to sign petition to be presented to the city].)

*C. Attorney Fees Award*

Because we are affirming the judgment in this matter, the attorney fees award likewise must be affirmed.

DISPOSITION

The judgment is affirmed. Teters shall recover her costs on appeal.

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NARES, Acting P. J.

WE CONCUR:

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McDONALD, J.

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IRION, J.